



Task Force to Study Erroneous Conviction and Imprisonment Meeting Minutes

Judiciary Committee Hearing Room (Room #101), House Office Building
6 Bladen Street, Annapolis, Maryland
Tuesday, September 4, 2018, 1:00 p.m. - 3:00 p.m.

Members in Attendance: Chairman Scott Shellenberger, Baltimore County State's Attorney; Senator Delores Kelley, Member of the Maryland Senate; Senator William C. Smith, Jr., Member of the Maryland Senate; Delegate Kathleen Dumais, Member of the Maryland House of Delegates; Delegate Michael E. Malone, Member of the Maryland House of Delegates; Don Hogan, Governor's Office of Crime Control and Prevention; Walter Lomax, Maryland Restorative Justice Initiative; and Michele Nethercott, Innocence Project Clinic, University of Baltimore, School of Law.

Welcome by Chairman Scott Shellenberger

Chairman Shellenberger welcomed everyone to the *Task Force to Study Erroneous Conviction and Imprisonment* (Task Force) meeting and thanked everyone for their support and attendance.

Introductions of Task Force Members

Members of the Task Force were invited to introduce themselves.

Approval of Meeting Minutes

Chairman Shellenberger suggested a motion to approve the minutes from the February 2018 meeting. A motion was made to adopt the minutes which was seconded, and approved without any edits or additions.

Legislation

Chairman Shellenberger discussed House Bill 1225 and the efforts that occurred to draft and propose this bill. He mentioned how Senator Kelley was instrumental in its development, as well as the support provided by the Task Force last year. Chairman Shellenberger and Senator Kelley briefly discussed the Gun Trace Task Force and the number of cases that were affected by its corruption. This was discussed further in relation to House Bill 1225.

In reference to House Bill 1225, members of the Task Force discussed two specific areas to include: (1) its fiscal impact; and (2) the state's attorney's certification that an individual's conviction was made in error under § 8-301 of the Criminal Procedure Article. After some



discussion occurred with regards to these specific areas, members of the Task Force agreed to parse them out so a vote could occur on each, separately.

Fiscal Impact

Ms. Nethercott mentioned one case in which a plaintiff did not know what to request for compensation and asked the jury to award what they thought was appropriate. With regards to the fiscal mechanics of this and how it plays out, she believes there are different pockets of money for these situations. She continued by stating that if people feel forced to do litigation, some governmental entity may end up paying a lot of money. Senator Kelley stated people are able to do that. She also stated that it would not be to our advantage to be fiscally prudent. Mr. Hogan mentioned that he abstained from the recommendation to support House Bill 1225 because he felt the Task Force did not have the appropriate fiscal information needed. He also mentioned his review of the six articles and the individuals impacted by the Gun Trace Task Force, and agreed with Ms. Nethercott that some of these people may not be eligible for compensation because they are guilty or did not serve any time.

Mr. Lomax indicated that fiscal considerations should not hinder the ability for victims of erroneous conviction to receive compensation. Chairman Shellenberger agreed that money should not be the deciding factor, however, he stated that question will be asked by the legislature. The idea behind this compensation process is to make a simple, easy, and streamlined process. Delegate Dumais agreed that money should not be the deciding factor, however, she believes the push back received from the Senate Committee and House Committee resulted from the fiscal component. She mentioned the potential need for education, as well as conversations to provide awareness and to ensure the right thing occurs for those erroneously convicted. Similar to what Chairman Shellenberger stated, Delegate Dumais indicated that this should be a simple and streamlined process. In addition, it is a high standard for a state's attorney to sign off on a certification made in error which is why education is essential. Senator Kelley included that the legislature will want to know the costs. Because of this, she suggested the inclusion of several "whereas" within the final document as it relates to DNA clearance or other occurrence unknown to the Task Force. She also stated that this could take ten years to identify all those erroneously convicted so the State will not be making payments in one year. Mr. Hogan stated that Mr. Lomax's point was well taken that those erroneously convicted deserved compensation, but also agreed with Delegate Dumais about the need to know the fiscal impact.

State's Attorney's Certification

Several members discussed whether an individual may be able to seek relief under House Bill 1225. Ms. Nethercott indicated that individuals who receive a new trial, not under § 8-301 of the Criminal Procedure Article, are not eligible for compensation. Chairman Shellenberger



questioned if a state's attorney or city attorney makes a motion for a new trial, then reviews the case, then signs a writ of innocence, will not allow for eligibility. Ms. Nethercott stated that is how she reads the bill. Chairman Shellenberger asked if any changes to the language of House Bill 1225 could occur to fix this problem. Ms. Nethercott indicated that nothing can occur until a dollar figure is identified. Delegate Dumais stated that a dollar figure cannot be provided which creates the fiscal issue. She stated that the language may be changed to clarify the eligibility component.

Mr. Hogan stated that the bill struck the provisions referencing § 8-301 of the Criminal Procedure Article which currently ties the certificate of error to a motion for a new trial. The change proposed in the bill will allow a State's Attorney to provide a certificate of error when appropriate. Chairman Shellenberger asked if the removal of that particular language would address the issue. Ms. Nethercott inquired about those attorneys that signed the certification. Chairman Shellenberger and Senator Kelley indicated that a minimal number of attorneys signed a certificate of error.

The members also discussed the exoneration of individuals by DNA. Chairman Shellenberger asked Mr. Lomax to provide insight as it relates to letting people know this is available. Mr. Lomax stated that most people involved with this process will know what is available to them. Delegate Dumais stated that individuals in the field, such as criminal defense lawyers, are aware of this information, as well as parole and probation officers. Senator Kelley indicated that there are approximately 32 Maryland individuals on the national list of erroneous convictions. She also mentioned the writ of innocence and DNA testing as it relates to those who are innocent and the difficulty in finding them.

Recent News Articles

Six recent articles relating to the erroneous conviction and imprisonment of individuals were distributed to members (*listed below*):

1. [1,700 cases affected by corrupt Baltimore police Gun Trace Task Force](#)
2. [After murder exoneration, freed man wonders how case went wrong](#)
3. [Baltimore man exonerated of murder after 30 years in prison](#)
4. [Baltimore paid a wrongfully convicted man \\$9M to resolve a lawsuit](#)
5. [Jury awards \\$15 million to Baltimore man exonerated of murder](#)
6. [Over prosecutors' objection, Baltimore judge removes exonerated man's assault conviction](#)



Discussion

Several discussions occurred as it relates to the next steps of the Task Force. In one discussion Mr. Lomax mentioned the inclusion of integrity units so that information may be provided to the state's attorney's. Chairman Shellenberger indicated that this works well in other states; however, attaching this to the current bill will create an issue to get it passed.

Additional topics were also discussed to include proposed motions for members to vote on. Based on these proposals, Chairman Shellenberger identified the following motions:

#1: Motion to strike the word "shall" and replace it with "may" for the Board of Public Works. Mr. Hogan mentioned the 32 Maryland individuals identified in the national list of erroneous convictions and the 1,700 Baltimore Gun Trace Task Force cases. Because it is unknown how many individuals have been erroneously convicted, he made a motion to maintain the current law that provides that the Board of Public Works "may" provide compensation instead of the proposed change to state the board "shall" provide compensation so as to allow the board flexibility to do justice based on the circumstances of each case. A majority of the board voted against the motion. Because of this, the language in the bill will stay as "shall."

#2: Motion to address the issue of whether a State's Attorney from another jurisdiction could issue a certificate of actual innocence. Delegate Malone inquired about the state's attorney's role in this process and if there are any jurisdictional limitations on where a State's Attorney could act. Delegate Dumais mentioned the possibility of having a letter of advice from the Attorney General to clarify this issue.

3. Motion to allow a State's Attorney to issue a certificate of actual innocence independent of a motion for a new trial. Chairman Shellenberger indicated the motion that was made to adopt the brackets in the bill striking the reference to § 8-301 of the Criminal Procedure Article. This will allow a certificate of error regardless of whether there is a motion for a new trial. This motion was seconded and all members were in favor, unanimously.

#4: Motion to require the Board of Public Works to adopt a process for considering applications for compensation. Various discussions occurred in reference to the Board of Works and its response to applicants seeking compensation for erroneous convictions. Because of this, Chairman Shellenberger suggested the inclusion of "shall" in which the Board of Public Works shall respond to the petitioner within 60 days or another time frame. Ms. Nethercott asked Mr. Lomax if he requested compensation through the Board of Public Works. Mr. Lomax invited his attorney Kevin O'Keefe to speak to this. Mr. O'Keefe indicated that a process occurred which included the request for compensation through the Board of Public Works. Unfortunately, Mr. Lomax has not yet received compensation for his nearly 40 years of incarceration. Mr. O'Keefe asked the Task Force if they could help with this. Chairman Shellenberger asked if a writ of



innocence was received and/or provided. Mr. O’Keefe indicated that State’s Attorney Marilyn Mosby provided one. Mr. O’Keefe also mentioned that numerous documents were submitted; however, there was a concern regarding the amount for compensation.

Delegate Dumais asked if a petition was submitted. Mr. O’Keefe indicated that a petition was filed and submitted, along with other necessary documents. The challenge, however, is that no specific form exists for petitioners to request compensation. Delegate Dumais indicated that if a process is identified and included in the bill, it may be helpful moving forward. Discussion also occurred regarding the potential request for information from the Board of Public Works for insight on the known erroneous conviction cases. Chairman Shellenberger suggested language to be included in the final report to suggest working with the Board of Public Works to develop a process. Delegate Dumais indicated that the legislature directs agencies to do such things and suggested codified language to direct the Board of Public Works to prepare a process and procedure for receiving and responding to petitioners. Chairman Shellenberger asked if that was a motion. Delegate Dumais indicated that it was. A second motion was made and all members were in favor, unanimously.

#5: Motion to continue to strike provisions of bill related to Board of Public Works. Mr. Hogan indicated that the bill requires various tasks of the Board of Public Works which they may be unaware of and not suited to performing. Delegate Dumais agreed with Mr. Hogan and asked if he would agree with striking page 5, lines 15-21 to address this. Senator Kelley seconded this motion and all members were in favor, unanimously.

#6: Motion to allow the State to pursue a claim against a local government responsible for an erroneous conviction. Mr. Hogan stated that it was unfair for the State to pay a claim when it was the wrongful actions of local government employees who caused the erroneous conviction. He moved to allow the State to seek indemnification against a local government under those circumstances. The motion failed for lack of a second.

#7: Motion to support House Bill 1225 as amended. Mr. Hogan requested that the task force vote on the bill as amended. Chairman Shellenberger called for a vote. Delegate Malone abstained, indicating that as a newly appointed member this was his first meeting and he did not have adequate information to make an informed decision. Mr. Hogan abstained, stating that there was inadequate information on the number of potential claimants and the cost to the State. Other than these two abstentions the members unanimously supported the bill.

Closing Remarks

Chairman Shellenberger thanked everyone for their attendance and continued effort. He asked for a motion to adjourn the meeting. A motion was made, then seconded, and approved.